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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS DEROSSETT, JR. and TIMOTHY MILLER

Appeal 2009-001488
Application 10/625,783
Technology Center 3700

Decided:¹ June 12, 2009

Before: WILLIAM F. PATE, III, JENNIFER D. BAHR, and STEVEN D.A.
McCARTHY, *Administrative Patent Judges*.

BAHR, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Thomas Derossett et al. (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1-6. Claim 7 has been canceled. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

The Invention

Appellants' claimed invention is directed to an apparatus for laser inscription of an image on a surface. An emitter housing 12 is pivotally attached to marking head 14. Specification 6:17-19. A laser beam emitted from a laser within emitter housing 12 is reflected off an adjustable alignment mirror 24 and to marking head 14 through a running passage 24. Specification 7:21-25. Once inside the marking head 14, the laser beam goes through a beam directing apparatus made of an X and a Y galvos mirror mechanism 32 and 34 (Specification 8:6-8), through a focusing lens 39 (Specification 8: 25-26), and out of an emission port 60 (Specification 9: 11-12).

Claim 1, reproduced below, is illustrative of the claimed invention.

1. In a system for inscribing a pattern on a surface, said system comprising an emitter housing including a laser for generating a high energy emission beam, a system controller for entering data representing the pattern to inscribed [*sic*] on the surface and for converting said data to control signals and beam direction apparatus for controllably directing said emission beam responsive to the control signals from said system controller and power circuitry connecting said laser and said beam direction means to a source of power, the improvement comprising an

emitter/marketing head assembly, said assembly comprising :

an emitter housing defining an interior comprising top, bottom, side and end walls, said housing containing a laser source for producing a high intensity beam disposed in said interior of said emitter housing;

a marking head comprising a housing defined by top, bottom, side and end walls, said walls defining an interior, said marking head being pivotally joined to a wall of said emitter housing by a pivot joint, said pivot joint including a through running passage for optical communication between said interior of said emitter housing and said interior of said marking head, said interior of said marking head electronically communicating with said emitter housing and with said system controller, one of said end walls defining an emission face of said marking head and having an emission port for the passage of the high intensity beam there through, said interior of said housing including beam directing apparatus for moving the high energy beam in a defined pattern on a surface being etched responsive to signals from said system controller and said housing further including a lens for focusing said high intensity beam;

an optical path from said laser source to said emitter port of said marking head being defined by an alignment mirror in said emission housing, said through-running passage in said pivot joint, said beam directing apparatus and said lens in said marking head;

circuit means electrically connecting said system controller, said marking head and said laser source.

The Rejections

Appellants seek review of the Examiner's rejection under 35 U.S.C. § 102(b) of claims 1-6 as anticipated by U.S. Patent 5,897,797 to Drouillard et al. (Apr. 27, 1999)².

SUMMARY OF DECISION

We AFFIRM.

ISSUE

Appellants argue that the Examiner has not shown that the subject matter of claims 1-6 is anticipated by Drouillard. Appellants argue claims 1-6 as a group. The issue presented in this appeal is whether the Appellants have demonstrated that Drouillard fails to describe a marking head pivotally joined to a wall of an emitter housing by a pivot joint, as claimed. Reply Br. 8-9, Ans. 5-6.

FACTS PERTINENT TO THE ISSUE

(FINDINGS-OF-FACT (FF))

FF1 Drouillard describes a device for laser etching of fruit. Abstract. A main cabinet 90 is attached to remote scanning head 50 via articulated arm and conduit assembly 92 and 94. Col. 10, l. 65 - col. 11, l. 1, fig. 6. A laser beam produced by laser tube 126 and emitted from main

² Appellants also seek review of the Examiner's objection to an amendment of the specification. App. Br. 8-9. However, this issue is reviewable by petition under 37 C.F.R. § 1.181, *see* MPEP § 608.04(c), and thus is not within the jurisdiction of the Board. *See In re Mindick*, 371 F.2d 892, 894 (CCPA 1967).

cabinet 90 is reflected through articulated arm and conduit assembly 92 and 94 to remote scanning head 50, where it is further directed through laser beam scanning mechanism 96 and output lens system 98 toward a target 24. Col. 11, ll. 1-17, col. 12, ll. 41-43.

FF2 As depicted by the dashed-line locations of lasers 28 in fig. 6 of Drouillard, the articulated arm and conduit assembly 92 and 94 allows for movement of remote scanning head 50 into various positions. The articulated arm assembly is depicted as having several pivoting joints that provide the articulated movement. Fig. 6.

PRINCIPLES OF LAW

“Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention.” *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984). In other words, “[t]here must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention.” *Scripps Clinic & Research Found. v. Genentech, Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983).

ANALYSIS

The Examiner found that Drouillard describes each element of claim 1, with the claimed "pivot joint" being described by the articulated arm and conduit assembly 92 and 94 (articulated arm). Ans. 3-4, *see* FF1, FF2. Appellants argue that the articulated arm is not a pivot joint, as claimed, because an articulated arm is "not a direct pivotal attachment." Reply. Br. 8. The Examiner responds that articulated arms are flexible and provide a pivotal motion (Ans. 6), and further, that the claims do not require a direct attachment (Ans. 7).

Drouillard's articulated arm describes several pivot joints within the articulated arm. FF2. The articulated arm connects the scanning head 50 to the main cabinet 90 (FF1), meaning they are joined by way of a pivot joint. Claim 1 does not recite that the marking head and emitter housing are *directly* joined, as Appellants argue. It is well established that limitations not appearing in the claims cannot be relied upon for patentability. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982). Because "directly joined" and "joined" have plainly different meanings, we would be reading in limitations not found in the claim to require "joined" to mean "directly joined." Therefore, Appellants' argument is not found persuasive.

CONCLUSION

Appellants' arguments fail to persuade us that the Examiner erred in rejecting the subject matter of claims 1-6 as anticipated by Drouillard. Drouillard describes a marking head pivotally joined to an emitter housing by a pivot joint.

Appeal 2009-001488
Application 10/625,783

DECISION

The Examiner's decision is affirmed as to claims 1-6.

AFFIRMED

mls

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